

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION

PARIS GARDNER,

Plaintiff,

vs.

OFFICER BEN JOHNSON,  
OFFICER STEVE JOHNSON, AND  
THE CITY OF ROCKFORD, ILLINOIS,

Defendants.

No. 08 C 50006

Hon. Judge Frederick J. Kapala

Hon. Mag. Judge P. Michael Mahoney

Jury Trial Demanded

**Plaintiff's Motion To Compel Complete Rule 26(a)(1) Responses**

Plaintiff, by his counsel, hereby seeks an order of Court requiring defendant to fully comply with F.R.C.P 26(a)(1), and with representations made to plaintiff's counsel concerning production of the police and investigative records pertinent to this case. In support of this motion, plaintiff states as follows:

1. The parties exchanged their initial disclosures on April 2, 2008, pursuant to the schedule set by the Court.
2. Counsel for the parties had agreed to exchange pertinent documents concurrent with the disclosures. Counsel for the parties previously discussed the nature of the police records in this case, which include an extensive investigatory report and related documents.
3. Defendants' Rule 26(a)(1) disclosures were not accompanied by a set of the pertinent records in this case, as anticipated. Instead, the documents transmitted included two pages of narrative police reports.
4. Defendants' disclosures also did not identify or describe the remaining records that were not produced. (Ex. A)
5. On April 2, 2008, plaintiff's counsel wrote to defendants' counsel concerning failure to produce the records and requesting they be produced immediately. (Ex. B, 4/2/08 letter from Soule to Hammer).
6. Thereafter, counsel engaged in correspondence via e mail concerning the issue. (Ex. C, e mail correspondence). Counsel for defendants represented generally that the additional documents would be produced without the need to file a motion, and then represented that they

would be produced on or about April 18, 2008 in conjunction with a protective order, to which plaintiff's counsel agreed. Plaintiff's counsel also agreed to keep the documents confidential pending entry of a protective order. Defendants' counsel also noted that she had been away from the office due to a medical condition.

7. Also on April 4, 2004, plaintiff mailed defendants a Request For Production of Documents that would cover the documents in question, but specifically indicated the right to the documents under Rule 26(a)(1) was not waived.

8. Plaintiff's counsel has not received either the documents or a proposed protective order.

9. On May 1, 2008, plaintiff's counsel wrote again indicating this motion would be filed and has not had a response. (Ex. C)

10. This case is previously set for a status appearance on Wednesday, May 7, 2008, and plaintiff will set this motion for that time in order to obtain the records by order of Court if they are not voluntarily produced before that time.

11. Attached is a Declaration of Jennifer K. Soule confirming compliance with Local Rule 37. (Ex. D)

WHEREFORE, plaintiff requests that the Court enter an order requiring identification and production of all pertinent documents in the possession of defendants in this case within three days.

Respectfully Submitted,

/s/ Jennifer K. Soule

Jennifer K. Soule, One of Plaintiff's

Jennifer K. Soule  
**Soule, Bradtke & Lambert**  
155 North Michigan Avenue, Suite 504  
Chicago, Illinois 60601  
312-616-4422 (telephone)  
312-616-4423 (telefax)

# Exhibit A

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
WESTERN DIVISION**

PARIS GARDNER,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.: 08 C 50006
	)	
OFFICER BEN JOHNSON, OFFICER	)	
STEVE JOHNSON, and THE CITY	)	
OF ROCKFORD, ILLINOIS,	)	
	)	
Defendants.	)	

**DEFENDANTS' RULE 26(a)(1) DISCLOSURE**

NOW COME the Defendants, OFFICER BEN JOHNSON, OFFICER STEVE JOHNSON, and CITY OF ROCKFORD, ILLINOIS, individually and in their official capacity; by and through their attorneys, CITY OF ROCKFORD DEPARTMENT OF LAW, Patrick W. Hayes, Legal Director and Angela L. Hammer, Assistant City Attorney, and for their Rule 26(a)(1) Disclosure state the following:

(A) the name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;

***All individuals with relevant information known to Defendants at this time are listed in the documents that are attached, specifically City of Rockford Police report 06-004189. Investigation continues.***

(B) a copy of, or a description by category and location of, all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

***A copy of City of Rockford Police report 06-004189 is attached. Investigation continues.***

(C) a computation of any category of damages claimed by the disclosing party, making available for inspection and copying as under Rule 34 the documents or other evidentiary

material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

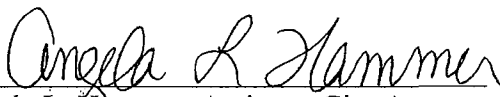
*No damages are claimed by the Defendants.*

(D) for inspection and copying as under Rule 34 any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment.

*The City of Rockford is a self-insured municipal corporation.*

Dated: April 2, 2008

CITY OF ROCKFORD DEPARTMENT OF LAW  
Attorneys for Defendants

By:   
Angela L. Hammer, Assistant City Attorney

CITY OF ROCKFORD DEPARTMENT OF LAW, #1111  
425 East State Street  
Rockford, IL 61104  
(815) 987-5540

# Exhibit B

# SOULE, BRADTKE & LAMBERT

Attorneys at Law

155 N. Michigan Ave., Suite 504, Chicago; Illinois 60601

312.616.4422

www.soulebradtkeandlambert.com

312.616.4423 (fax)  
Office@SBLLegal.com

Jennifer K. Soule  
Kelly K. Lambert

Of Counsel  
James G. Bradtke

April 4, 2008

**VIA FACSIMILE: 815-967-6749**

Angela L. Hammer, Assistant City Attorney  
The City of Rockford  
Legal Department  
425 East State Street  
Rockford, Illinois 61104-1068

**Re: Paris Gardner v. Ben Johnson, et al.**  
**Case No. 08 C 50006**

Dear Angela:

I write in order to confer and attempt to resolve this dispute prior to making a motion before the Court. As indicated to you in a voice mail this morning, defendant's initial disclosures are fatally deficient in that documents plainly subject to the rule were not identified or produced. Moreover, when we had a conversation about our respective production of documents to occur on April 2, 2008, you confirmed in response to my inquiry that the police records would be produced by you on that date. This is in the context of our discussing the investigation file and nature of the records at issue here (referenced in the complaint as well) and my describing them to you as voluminous according to the detailed description of them I received from Mr. Gardner's public defender (who was purportedly not able to provide me the records due to an office agreement with the police department). It is common knowledge that an investigation report and multiple exhibits was prepared by the police department concerning the incident in this case.

You did not produce the greater volume of the relevant documents in this case, nor were they identified, nor did you certify in the alternative that defendant does not intend to rely on them for its defense. You produced two sheets of actual reports.

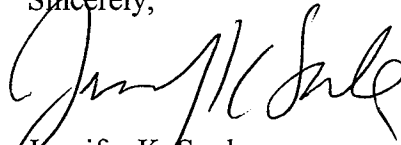
I relied on your representation that you would, in fact, produce the records pertinent to this case on April 2, 2002. Please produce the documents no later than April 8, 2008. Otherwise, regrettably, I will make a motion before the Court to compel immediate production. I have sent out a request for production as well, but plaintiff is prejudiced by they delay and the documents should be produced immediately.

Angela L. Hammer  
April 4, 2008  
Page Two (2)

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Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Jennifer K. Soule". The signature is fluid and cursive, with the first name "Jennifer" and last name "Soule" being the most prominent parts.

Jennifer K. Soule  
Attorney at Law

JKS/ldw



\*\*\*\*\*

\*\*\* FAX TX REPORT \*\*\*

\*\*\*\*\*

TRANSMISSION OK

JOB NO.	0038
DEPT. ID	13
DESTINATION ADDRESS	918159676949
PSWD/SUBADDRESS	
DESTINATION ID	
ST. TIME	04/07 09:17
USAGE T	00' 27
PGS.	3
RESULT	OK

**SOULE, BRADTKE & LAMBERT**

ATTORNEYS AT LAW

155 NORTH MICHIGAN AVENUE, SUITE 504

CHICAGO, ILLINOIS 60601

[OFFICE@SBLLEGAL.COM](mailto:OFFICE@SBLLEGAL.COM)

TELEPHONE: 312.616.4422

TELEFAX: 312.616.4423

JENNIFER K. SOULE

KELLY K. LAMBERT

OF COUNSEL

JAMES G. BRADTKE

**FACSIMILE COVER SHEET****PLEASE DELIVER THE FOLLOWING INFORMATION FROM**

Date:	April 4, 2008
To:	Angela Hammer
At:	The City of Rockford
Fax:	815.967.6949
Re:	Paris Gardner

Numbers of Pages (including cover sheet): 3

**COMMENTS:**

Please see attached letter.

☒ X

PLEASE REPLY UPON RECEIPT

**SOULE, BRADTKE & LAMBERT**

ATTORNEYS AT LAW

155 NORTH MICHIGAN AVENUE, SUITE 504

CHICAGO, ILLINOIS 60601

OFFICE@SBLLEGAL.COM

TELEPHONE: 312.616.4422

TELEFAX: 312.616.4423

JENNIFER K. SOULE

KELLY K. LAMBERT

*OF COUNSEL*

JAMES G. BRADTKE

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Date:	April 4, 2008
To:	Angela Hammer
At:	The City of Rockford
Fax:	815.967.6949
Re:	Paris Gardner
Numbers of Pages (including cover sheet):	3

**COMMENTS:**

Please see attached letter.

☒ X

PLEASE REPLY UPON RECEIPT

☐ COPY TO FOLLOW VIA U.S. FIRST CLASS MAIL☐ COPY TO FOLLOW VIA ELECTRONIC MAIL☐ COPY TO FOLLOW VIA FEDERAL EXPRESS

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PLEASE CONTACT OUR OFFICE AT 312-616-4422 IF NOT CORRECTLY TRANSMITTED

# Exhibit C

Subj: Re: Gardner v. City of Rockford, et al.  
Date: 4/16/2008 11:03:57 A.M. Central Daylight Time  
From: JENKSOULE  
To: Angela.Hammer@rockfordil.gov

Angela: I anticipate that you will scan and produce the documents this week, and that the protective order will be completed and entered by the court as soon as it can be. In the meantime, the records will be kept confidential by me.

We continue to work on obtaining the remainder of my client's medical records, though the process with some providers is cumbersome - it is moving along. We will produce as we receive them.

- Jennifer

In a message dated 4/14/2008 2:54:44 P.M. Central Daylight Time, Angela.Hammer@rockfordil.gov writes:

Jennifer,

I will have the internal investigation reports by the end of this week. In the meantime, I will prepare a Protective Order covering the reports and your client's medical records. I will email you a copy of the draft of the Protective Order once it's completed.

Thank you,  
Angela

---

It's Tax Time! Get tips, forms and advice on [AOL Money & Finance](#).

Subj: **Re: Gardner v. City of Rockford**  
Date: 4/10/2008 12:24:11 P.M. Central Daylight Time  
From: [anham98@yahoo.com](mailto:anham98@yahoo.com)  
To: [JENKSOULE@aol.com](mailto:JENKSOULE@aol.com)

That's fine with me. I'll contact you as soon as I receive the documents.

Thank you,  
Angela

**JENKSOULE@aol.com** wrote:

Ok. I will agree to keep the documents confidential until a protective order can be agreed/entered. I will ask that my client's medical records also be covered by the protective order.

I will be available at 312-560-1626 tomorrow.

- Jennifer

In a message dated 4/10/2008 11:31:45 A.M. Central Daylight Time, [anham98@yahoo.com](mailto:anham98@yahoo.com) writes:

Jennifer,

I will contact the police department and request a copy of the file. I'll contact you once I receive the documents. I'm hoping to be back at work tomorrow (Friday).

Thanks,  
Angela

**JENKSOULE@aol.com** wrote:

Angela: Thanks for getting back to me. I hope you are feeling okay.

Yes, a protective order is no problem.

I was going to set a motion for a week from today - but will hold off if the documents can be produced this week. I am going to be in Rockford all day today with other clients, but should have e mail access at the meeting location. And my mobile phone number is 312-560-1625.

Let me know your plan.

Take care,  
- Jennifer

In a message dated 4/9/2008 8:13:42 A.M. Central Daylight Time, [anham98@yahoo.com](mailto:anham98@yahoo.com) writes:

Jennifer,

I apologize for the delay in my response. I've been out of the office since last Thursday due

to a medical concern.

I believe we can resolve the disclosure issue short of judicial involvement. Are you willing to sign a protective order relating to the internal investigation reports?

I'm still out of the office, but I have access to my email account. Please email me at this address or the [angela.hammer@rockfordil.gov](mailto:angela.hammer@rockfordil.gov) address.

Thank you,  
Angela

---

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[ttp://mail.yahoo.com](http://mail.yahoo.com)

Subj: **Re: Gardner v. City of Rockford**  
Date: 4/10/2008 12:08:24 P.M. Central Daylight Time  
From: JENKSOULE  
To: [angham98@yahoo.com](mailto:angham98@yahoo.com)

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---

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Subj: **serving our disclosures, etc.**  
Date: 3/19/2008 3:45:38 P.M. Central Daylight Time  
From: JENKSOULE  
To: [Angela.Hammer@rockfordil.gov](mailto:Angela.Hammer@rockfordil.gov)

Angela: Let me know if you want to exchange our disclosures in Gardner by e mail, including our scanning and sending the documents that will accompany the respective disclosures. That would be fine with me. Also, what is the date again of your expected leave of absence? I want to target a time before then to talk about a deposition schedule, etc..

Thanks,

Jennifer K. Soule  
Soule, Bradtke & Lambert  
155 N. Michigan Ave., #504  
Chicago, IL 60601  
312-616-4422 /312-616-4423 (fax)  
[jenksoule@aol.com](mailto:jenksoule@aol.com)  
[soule-bradtke@worldnet.att.net](mailto:soule-bradtke@worldnet.att.net) / [sbl155law@aol.com](mailto:sbl155law@aol.com)  
[www.soulebradtkelambert.com](http://www.soulebradtkelambert.com)

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Subj: RE: serving our disclosures, etc.  
Date: 3/19/2008 3:59:27 P.M. Central Daylight Time  
From: Angela.Hammer@rockfordil.gov  
To: JENKSOULE@aol.com

Jennifer,

An email exchange of documents is fine with me. I expect to be on leave from 6/1 to 9/2.

Angela

-----Original Message-----

**From:** JENKSOULE@aol.com [mailto:JENKSOULE@aol.com]  
**Sent:** Wednesday, March 19, 2008 3:46 PM  
**To:** Angela Hammer  
**Subject:** serving our disclosures, etc.

Angela: Let me know if you want to exchange our disclosures in Gardner by e mail, including our scanning and sending the documents that will accompany the respective disclosures. That would be fine with me. Also, what is the date again of your expected leave of absence? I want to target a time before then to talk about a deposition schedule, etc..

Thanks,

Jennifer K. Soule  
Soule, Bradtke & Lambert  
155 N. Michigan Ave., #504  
Chicago, IL 60601  
312-616-4422 /312-616-4423 (fax)  
jenksoule@aol.com  
soule-bradtke@worldnet.att.net / sb1155law@aol.com  
[www.soulebradtkelambert.com](http://www.soulebradtkelambert.com)

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---

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Subj: **Re: FW: Attached image data.**  
Date: 4/2/2008 5:38:07 P.M. Central Daylight Time  
From: JENKSOULE  
To: Angela.Hammer@rockfordil.gov

Angela: I received your disclosures. As I believe I mentioned to you, there is extensive documentation relating to an internal police investigation of complaints of Mr. Gardner. These records were described to me by Mr. Gardner's public defender and I believe I informed you of them. I believe they should be produced in conjunction with defendants' initial disclosures. When can I expect that production?

- Jennifer Soule

In a message dated 4/2/2008 5:32:04 P.M. Central Daylight Time, Angela.Hammer@rockfordil.gov writes:

-----Original Message-----

From: LG\_DC01@rockfordil.gov [mailto:LG\_DC01@rockfordil.gov]  
Sent: Wednesday, April 02, 2008 12:09 PM  
To: Angela Hammer  
Subject: Attached image data.

Sent from Legal Dept. scanner.

---

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Subj: documents  
Date: 5/1/2008 11:34:43 A.M. Central Daylight Time  
From: JENKSOULE  
To: [Angela.Hammer@rockfordil.gov](mailto:Angela.Hammer@rockfordil.gov)

Angela: I have not received the records you indicated would be sent long ago. I am filing a motion to compel today. I consider this a significant discovery breach and am concerned about your representations that the documents would be produced in a timely fashion - and weren't. The only reason I did not file a motion before now is that I was out of town for a week at an international conference.

Jennifer K. Soule  
Soule, Bradtke & Lambert  
155 N. Michigan Ave., #504  
Chicago, IL 60601  
312-616-4422 /312-616-4423 (fax)  
[jenksoule@aol.com](mailto:jenksoule@aol.com)  
[soule-bradtke@worldnet.att.net](mailto:soule-bradtke@worldnet.att.net) / [sbl155law@aol.com](mailto:sbl155law@aol.com)  
[www.soulebradtkelambert.com](http://www.soulebradtkelambert.com)

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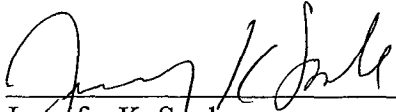
# Exhibit D

State of Illinois       )  
County of Cook       )

**Declaration of Jennifer K. Soule**

Jennifer Soule, an attorney, declares based on personal knowledge that the following facts are true and accurate:

1. I have attempted to resolve the discovery dispute described in plaintiff's Motion To Compel, attached.
2. The facts as set forth in Plaintiff's Motion To Compel Complete Rule 26(a)(1) Responses are true and correct.

  
\_\_\_\_\_  
Jennifer K. Soule  
Date: 5-2-08